BEFORE THE

PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

DOCKET NO. 2019-390-E

IN RE: Ganymede Solar, LLC, Petitioner, Dominion Energy South Carolina, Inc., Respondent.	)	**DOMINION ENERGY SOUTH CAROLINA, INC.'S MOTION TO COMPEL**

Dominion Energy South Carolina, Inc. ("DESC"), pursuant to S.C. Code Ann. Regs. § 103-829(A), § 103-833, and the South Carolina Rules of Civil Procedure ("SCRCP"), petitions the Public Service Commission of South Carolina ("Commission") for an Order compelling Ganymede Solar, LLC's ("Ganymede") response to DESC's First Set of Discovery Requests ("Discovery Requests"), which are attached hereto as Exhibit A and incorporated herein. The Discovery Requests were filed on January 17, 2020, in the above-referenced docket. Indeed, Ganymede seeks the best of both worlds—initiating the instant proceeding to avoid an overdue milestone payment in its interconnection agreement through an open-ended extension of time, while evading any responsibility as a litigant to participate in the discovery process. In accordance with Rule 37 of the SCRCP, DESC (i) requests that this Commission compel discovery and (ii) seeks recovery from Ganymede of its reasonable expenses incurred in filing this Motion to Compel. Pursuant to S.C. Code Ann. Regs. § 103-829(B), DESC requests expedited consideration of this Motion to Compel in advance of any hearing in this Docket and at the Commission's earliest convenience.

RELEVANT BACKGROUND

On December 20, 2019, Ganymede initiated the instant dispute by filing a Motion to Maintain Status Quo and a Petition in the above-referenced docket—each of which named DESC as the Respondent.[1] Ganymede filed an amended Petition (the "Petition") on January 24, 2020. The Petition made a number of unjustified claims to avoid making a milestone payment in accordance with Ganymede's interconnection agreement (the "Ganymede IA"), including invoking financial hardship due to alleged market uncertainty. Not only does Ganymede's requested relief violate the terms of the Ganymede IA, applicable South Carolina laws and regulations, and guidance of the Federal Energy Regulatory Commission, but it would also result in cascading re-studies and cast doubt upon every interconnection agreement under the Commission's jurisdiction. In response to Ganymede's filings, DESC filed (i) a Response in Opposition to Motion to Maintain Status Quo on December 30, 2019, (ii) an Answer on January 21, 2020, and (iii) an Answer to Amended Petition on January 24, 2020. Since Ganymede's initial filings, Ganymede failed to make its second milestone payment ("Milestone Payment 2") under the Ganymede IA. As a result, DESC terminated the Ganymede IA pursuant to its terms and removed Ganymede from the interconnection queue.

In order to understand the basis of Ganymede's claims and prepare for the DESC testimony required by the Commission in this docket, DESC properly filed the Discovery Requests. Pursuant to applicable Commission rules and regulations, the responses to the Interrogatories and Requests for Production of Documents contained in the Discovery Requests were due on February 6, 2020, and the deadline for responses to the Requests for Admission in the Discovery Requests is February 17, 2020. *See* S.C. Code Ann. Regs. § 103-833, S.C. Code

[1] Indeed, the Commission has ruled that where a Petitioner seeks relief under an interconnection agreement pursuant to a Motion to Maintain Status Quo, DESC should be "a party to the docket without having to intervene in it." *Request of Beulah Solar, LLC for Modification of Interconnection Agreement with South Carolina Electric & Gas Company*, 2019 WL 202765, at *1 (S.C.P.S.C. 2019).

Ann. Regs. § 103-835, and Rule 36, SCRCP. Instead of substantively responding, Ganymede filed its *Objections/Responses to Company's First Set of Discovery Requests* on February 4, 2020 (the "Objections"). The Objections contain 19 numbered paragraphs, that, in some form or another, disclaim Ganymede's well-settled obligations to substantively respond to the Discovery Requests.

In addition to providing zero substantive responses to the Discovery Requests—thereby disavowing Ganymede's obligations to meaningfully participate in discovery in a proceeding it initiated—Ganymede also filed a *Motion for Protective Order*[2] with the Commission on February 4, 2020 (the "Motion for Protective Order"), seeking to stay its responses to the Discovery Requests and otherwise prevent this matter from proceeding. In conjunction, the Objections and Motion for Protective Order inexplicably argue that the Discovery Requests are "moot," "inappropriate," and "serve no legitimate discovery purpose." Objections at 1; Motion for Protective Order at 2. As a result, Ganymede did not sufficiently respond to the Discovery Requests and improperly requested the Commission toll "any requirement that Ganymede respond to [the] Discovery Requests." Motion for Protective Order at 3.

On February 5, 2020, DESC also sent a deficiency letter (the "Deficiency Letter") outlining these deficiencies, and offered Ganymede three days from receipt thereof to correct such deficiencies. A copy of this letter is attached hereto as Exhibit B and incorporated herein. At the time of filing this Motion to Compel, DESC has not received updated discovery responses from Ganymede which address the deficiencies noted in the Deficiency Letter. Ganymede's

[2] DESC plans to respond separately to the Motion for Protective Order. However, DESC notes that the Motion for Protective Order improperly seeks to ban discovery in its entirety. Indeed, Rule 26(c) of the SCRCP contemplates such a motion as proper when "justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden by expense." It is hard to imagine how every item contained in the Discovery Requests falls into one of these categories, as the Motion for Protective Order seems to allege. Surely, simply inquiring whether the Ganymede IA is a valid written agreement cannot be characterized as an "annoyance, embarrassment, oppression, or undue burden by expense."

failure to adequately respond to the Discovery Requests is improper, and complete responses in conformance with the SCRCP and Commission precedent should be compelled.

ARGUMENT

As a party of record, DESC is entitled to serve the Discovery Requests in accordance with S.C. Code Ann. Regs. § 103-833, S.C. Code Ann. Regs. § 103-835, and Rule 36 of the SCRCP, in each case, that seek "[a]ny material relevant to the subject matter involved in the pending proceeding." S.C. Code Ann. Regs. § 103-833(A).[3] Indeed, the Commission has held that where it conducts a *de novo* hearing, "its discovery rules are clearly applicable." *Application of Daufuskie Island Utility Company*, 2017 WL 4864953, at *1 (S.C.P.S.C. 2017).

Pursuant to Rule 37(a) of the SCRCP, if a party fails to adequately respond to requests for discovery, the requesting party may move for an order compelling compliance. Rule 37(a)(2), SCRCP. Indeed, the Commission has held that "Motions to Compel before the Commission are properly brought in instances where a party upon whom discovery requests . . . are served fails or refuses to comply with the discovery requests without proper grounds for objection." *IN RE: Petition of the Office of Regulatory Staff to Establish Generic Proceeding Pursuant to the Distributed Energy Resource Program Act*, 2018 WL 488937, at *1 (S.C.P.S.C. 2018) (emphasis added). When such a motion is granted, the Commission shall, upon a finding that the opposing party's noncompliance was not substantially justified, and after affording an opportunity to be heard, require the noncomplying party or attorney, or both, to pay moving party's reasonable expenses incurred in making the motion, including attorneys' fees. *See* Rule 37(a)(4), SCRCP.

[3] *See also* Rule 26(b) of the SCRCP ("[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action"); *Kramer v. Kramer*, S.E.2d 212, 217 (S.C. Ct. App. 1996) ("the rules of discovery were designed to promote the full examination of all relevant facts and issues and to discourage litigants from surprising one another through the introduction of unexpected testimony").

The Objections and Motion for Protective Order exhibit a blatant disregard for these clear rules and regulations. DESC is a party of record in this docket because Ganymede named DESC as Respondent in the Petition.[4] The Discovery Requests seek, among other things, information related to (i) the Ganymede IA, (ii) Ganymede's alleged efforts to obtain financing, and (iii) how the variable integration charge language (the "VIC Language") in DESC's standard power purchase agreement[5] has purportedly adversely affected Ganymede. In addition, DESC is entitled to explore facts related to these issues, including (i) Ganymede's parent company's—Cypress Creek Renewables, LLC ("Cypress Creek")—involvement in solar projects with power purchase agreements containing identical VIC Language, (ii) Cypress Creek's ability to secure funding for other projects containing the VIC Language, (iii) Ganymede's and Cypress Creek's communications with investors as to the project, and (iv) what plan, if any, Ganymede and Cypress Creek have that would render this "now unfinanceable" project sufficiently attractive to investors if the Commission sided with Ganymede and revived, and then modified, the Ganymede IA. Ganymede's Motion to Maintain Status Quo at 1.

In each case, DESC requests information related to claims Ganymede has made in its own filings and clearly "material relevant to the subject matter involved in the pending proceeding." S.C. Code Ann. Regs. § 103-833(A). It is ironic that Ganymede now seeks to shield itself from having to further develop these issues in front of the Commission given that it is Ganymede that put these issues in dispute—not DESC. Presumably, Ganymede would welcome the opportunity to develop the record in front of the Commission as to precisely how

[4] Ganymede's latest correspondence filed with the Commission on February 10, 2020, would have this Commission believe that DESC is not entitled to discovery simply because Ganymede did not file a "Complaint." However, it is undisputed that DESC is a party of record in this docket and has an interest in the outcome. As such, it is entitled to avail itself of the discovery rules of this Commission applicable to parties of record.

[5] To date, Ganymede has not executed a power purchase agreement with DESC.

the VIC Language has prejudiced its project to this extent—however, Ganymede curiously and vehemently refuses to provide any discovery on these exact topics.

The position that Ganymede advances in the Motion for Protective Order—that the Discovery Requests are improper because "Ganymede is not seeking relief from [DESC]"—is misguided. Surely, Ganymede would acknowledge that every party seeking relief in front of the Commission seeks such relief from only one entity—the Commission. As discussed in DESC's *Letter to Hearing Officer*, filed in the above-referenced docket on February 5, 2020, Ganymede's logic is untenable.[6] For example, DESC refers to the recent docket in which the Commission addressed, among other things, DESC's avoided costs methodology—Docket No. 2019-184-E. Therein, DESC sought neither relief nor approval from any party but the Commission. Yet, multiple third-parties were permitted to serve discovery upon DESC. According to Ganymede's logic, not only should discovery have been prohibited in that docket, but it should also be prohibited in every other docket in which another party is named but in which relief is sought from the Commission. Indeed, neither the parties nor the Commission would be privy to the information obtained through the routine discovery process and the overall adjudicative process would be severely hindered—surely an illogical outcome that avoids resolution of disputes—if Ganymede's logic was followed. This logic lacks even a scintilla of merit or support and there is not "good ground to support it" as required by Rule 11 of the SCRCP.[7]

In-line with Ganymede's continuing campaign to stonewall DESC and the Commission, Ganymede did not even respond with a single detailed objection to any specific request, only 19 general objections, which range from relevancy, to attorney-client privilege. DESC is only left to

[6] DESC's Letter to Hearing Officer is attached as Exhibit C and incorporated herein.

[7] Rule 11 of the SCRCP requires that the "written or electronic signature of an attorney . . . constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information and belief **there is good ground to support it; and that it is not interposed for delay**." (emphasis added).

wonder as to the specific reason that Ganymede could not even admit certain foundational questions, such as admitting that Ganymede read the Ganymede IA prior to signing.[8] Indeed, DESC even advised Ganymede of such deficiencies in the Deficiency Letter—however, in keeping with a familiar pattern, Ganymede produced nothing of consequence. In short, Ganymede has engaged in a pattern of behavior toward DESC that exhibits prejudice, evasiveness, and bad faith.

When Ganymede's violations of these clear rules and regulations are examined in their entirety, one thing becomes clear—Ganymede utilizes these stonewall tactics because if the information requested were laid bare, the arguments in the Petition and the Motion to Maintain Status Quo would crumble. For this reason, and to uphold the tenants of the SCRCP and this Commission's rules and regulations, discovery should be compelled. Given the urgency of this matter, the pending deadlines imposed upon DESC to develop testimony, and the need to prepare for the hearing scheduled in this matter, DESC asks for expedited consideration of this Motion to Compel.

CONCLUSION

As discussed above, Ganymede has provided no support whatsoever in the Objections or the Motion for Protective Order. On the other hand, DESC has pinpointed rules, regulations, and applicable law that indicate (i) DESC is entitled to discovery from Ganymede, (ii) the Discovery Requests contain requests for information that are clearly within the scope of permitted discovery, and (iii) Ganymede's actions are evasive, contrary to well-settled rules and regulations, and could be subject to sanctions. For these reasons, as well as those stated above, the Motion to Compel should be granted and DESC awarded its reasonable expenses in connection with this Motion to Compel. Pursuant to S.C. Code Ann. Regs. § 103-829(B), DESC

[8] See Discovery Requests at 7.

requests expedited consideration of this Motion to Compel in advance of any hearing in this docket and at the Commission's earliest convenience.

Respectfully Submitted,

/s/ J. Ashley Cooper
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Cayce, South Carolina
February 11, 2020

BEFORE THE

PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

DOCKET NO. 2019-390-E

IN RE: Ganymede Solar, LLC, Petitioner, Dominion Energy South Carolina, Inc., Respondent.	)	**CERTIFICATE OF SERVICE**

This is to certify that I, Ashley Cooper, have this day caused to be served upon the person named below the ***Motion to Compel*** by electronic mail and by placing a copy of same in the United States Mail, postage prepaid, in an envelope addressed as follows:

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/s/ J. Ashley Cooper

This 11th day of February, 2020

Exhibit A

Exhibit B

Exhibit C